

Checklist: Ethics and practicalities

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PROFESSIONAL STRUCTURES

How many categories of lawyer are there in your jurisdiction? In each case, please give the local name and an English translation (if relevant) as well as a brief description of the lawyer's rights and duties.

There is only one category of lawyer, the attorney-at-law (*avocat*). Lawyers can provide all types of legal services to their clients, with the following exceptions. Trainee lawyers (*avocat stagiar*) can only plead before the lower courts. After two years of practice, trainee lawyers must pass an exam to become qualified lawyers (*avocat definitiv*) who can plead before any court except the High Court of Justice and Cassation.

Lawyers with more than five years' experience have no restrictions.

How are law firms in your jurisdiction usually organised (for instance, as partnerships, companies or sole practices)?

Law firms are usually organised as unlimited liability partnerships, although limited liability partnerships are now allowed. Other organisational forms include sole practitioners and associated sole practitioners.

Are multi-disciplinary practices (MDPs) allowed in your jurisdiction?

No.

Do restrictions apply to foreign lawyers/law firms practising in your jurisdiction?

Foreign lawyers can practise the law of their jurisdiction or international law, but only if they are organised in a form permitted in Romania (*see above*). To practise Romanian law, they must pass an exam on Romanian law and language, set by the National Union of the Romanian Bars (*Uniunea Nationala a Barourilor din Romania*). However, they cannot plead before any Romanian judicial authority, except international arbitration tribunals.

These restrictions will not apply to EU lawyers when Romania joins the EU in 2007.

CLIENT PROTECTION

Is there a register of qualified lawyers and, if so, how can it be accessed?

Lawyers are registered in the Lawyers' Yearly Register (*Tabloul anual al avocailor definitivi si stagiar*), which is maintained by, and can be obtained from, the regional bars associated with the National Union of the Romanian Bars (*see below*).

Is membership of a national bar association, law society or similar mandatory?

Lawyers must be members of a regional bar associated with the National Union of the Romanian Bars, which is located at:

Palatul de Justitie, 5 Splaiul Independentei
District 5, Postal Code 050091
Bucharest
Romania
T +40 21 313 4875
F +40 21 313 4880
W www.unbr.ro

Are lawyers bound by client confidentiality rules?

Lawyers have an unlimited obligation to maintain client confidentiality for an indefinite period. This obligation covers every activity performed by a lawyer and is binding on their partners, associates and employees. It can only be waived where the lawyer is subject to criminal or disciplinary investigation, or if the lawyer's fees are subject to litigation and confidentiality is waived exclusively for the lawyer's defence.

However, these rules are contradicted by the anti-money laundering laws, under which both lawyers and notaries have reporting obligations and cannot refuse to co-operate with the National Office for the Prevention of and Fighting Against Money Laundering (*Oficiul National de Prevenire si Combatere a Spalarii Banilor*).

The confidentiality rules and the anti-money laundering laws are to be reconciled.

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Are communications with lawyers protected from disclosure (that is, privileged) in judicial or other proceedings?

Any communication between lawyers, lawyers and clients, and lawyers and their professional bodies is confidential, regardless of its form.

Communications between lawyers, or between lawyers and clients, cannot be used as evidence in court and cannot lose their confidential character.

A lawyer can refuse to communicate with his client, if that communication would take place in the presence of criminal investigators or any other representative of a public authority, or if it is controlled by a public authority.

Is indemnity insurance mandatory for practising lawyers? If so, what is the minimum level of cover required?

Indemnity insurance for practising lawyers is mandatory and must amount to an annual minimum of EUR6,000 (about US\$7,600) for qualified lawyers and EUR3,000 (about US\$3,800) for trainee lawyers.

What are the rules on conflicts of interest?

Lawyers cannot advise, represent or defend more than one client in the same case, if the clients have, or there is a real risk that they may have, conflicting interests. The lawyer cannot advise a new client, if this may affect the confidentiality of information provided by a previous client, or if information held by the lawyer about the previous client provides an unjust advantage to the new client.

To whom should complaints about lawyers' professional conduct be made?

Complaints should be addressed to the regional bar with which the lawyer is registered (*see above*).

Can lawyers/law firms hold client files in the event of a dispute?

No. Lawyers must return any original document belonging to a client on request.

FEES**How are fees regulated? Is there a tariff system?**

Fees must be freely negotiated with clients and unlike previously, lawyers cannot set minimum, recommended or maximum fees.

The following are allowed: hourly rates, flat fees, success fees and a combination of these types of fees.

What types of fee agreements are most commonly used? Must fee agreements be in writing?

Fixed fee arrangements are most common. However, prominent law firms also use hourly rates and success fees. Fee agreements must be in writing.

CLIENT MONEY**How is the holding of client funds regulated?**

A lawyer must open separate client accounts for client funds with a legally-incorporated and authorised financial institution. He must also keep separate accountancy records for client funds and maintain them for ten years after the agreement between the lawyer and client is terminated.

Are there rules on money laundering?

A lawyer must verify his client's identity and notify the relevant authorities of any suspicious money laundering transactions (*see above*).

NOTARIES**Are notaries required for share purchases or transfers, real estate purchases or leases, or company formation?**

Notaries are only required for land disposals.

Are notary fees fixed or a percentage of the transaction value?

Notary fees are usually a percentage of the transaction value.

Can notaries work within law firms?

No, notaries are a distinct profession.

Is there a national regulatory body for notaries?

The national regulatory body is the Notary Public National Union of Romania (*Uniunea Nationala a Notarilor Publici din Romania*), located at:

41, General Berthelot
1st District, Postal Code 010164
Bucharest
Romania
T +40 21 313 9920
F +40 21 313 9910
E unnpr@ines.ro
W www.uniuneanotarilor.ro

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